(18,930.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1904.

No. 33.

RICARDO AMADO, PLAINTIFF IN ERROR,

vs.

THE UNITED STATES.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF PORTO RICO.

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1 In the District Court of the United States for Porto Rico, April Term, A. D. 1902.

Entry of Report of Grand Jury, April 17th, 1902.

UNITED STATES }
vs.
RICARDO AMADO. }

Now comes the grand jury into court and reports the following indictment, which is filed, the same being indorsed "A true bill" and signed by the foreman, to wit: The United States *vs.* Ricardo Amado.

Indictment.

Filed April 17th, 1902.

UNITED STATES OF AMERICA, }
District of Porto Rico, } *ss:*

In the District Court of the United States in and for the District Aforesaid, at the April Term Thereof, A. D. 1902.

The grand jurors of the United States, impaneled, sworn, and charged at the term aforesaid, of the court aforesaid, on their oath present, that Ricardo Amado on the 28th day of May in the year of our Lord nineteen hundred and one, in the said district and within the jurisdiction of said court, did unlawfully receive, conceal and facilitate the transportation, concealment and sale of, certain merchandise, to wit: two hundred and fifty bottles Holland gin, sixty bottles of vermouth, forty bottles of b-andy and forty-six bottles and seventy-two half bottles of Danish beer, then lately before imported into the district of Porto Rico aforesaid and upon such importation subject to the payment of duties to the said United States, and fraudulently imported as aforesaid contrary to law, that is to say, without payment of the duties aforesaid, he, the said Ricardo Amado, at the time of so receiving and concealing the said merchandise and facilitating the transportation, concealment
2 thereof, then well knowing the same to have been imported contrary to law—contrary to the form of the statute in such case made and provided, and against the peace and dignity of the United States.

(Signed) N. B. K. PETTINGILL,
United States Attorney.

Indorsed: A true bill. Benj. F. Butler. foreman."

1—33

APRIL 19TH, 1902.

In the District Court of the United States for Porto Rico.

Present: The Hon. Wm. H. Holt, judge.

Entry of Arraignment.

U. S.
vs.
RICARDO AMADO.

The defendant herein, Ricardo Amado, was duly arraigned, pleaded not guilty, his bail is fixed by the court at one thousand dollars ($1,000.00) to be executed before the clerk of the court and the cause is set for hearing on April 28th, 1902.

In the District Court of the United States for Porto Rico.

MAY 1ST, 1902.

Present: Hon. Wm. H. Holt, judge.

U. S.
vs.
RICARDO AMADO.

Now comes the U. S. attorney and presents a motion that this cause be continued. Whereupon the cause is ordered continued and the following named witnesses are recognized in the sum of one hundred dollars each for their appearance on the fourth day of the October term of this court, namely, Oct. 16th, 1902: Captain Enrique Molina, Rufino Ramirez, Carlos Izquierdo, and Benito Baquero, as witnesses for the plaintiff and Heraclio de Jesus for the defendant.

3 In the District Court of the United States for Porto Rico.

THURSDAY, *October 16th*, 1902.

Present: Hon. Wm. H. Holt, judge.

Entry.

U. S.
vs.
RICARDO AMADO.

Upon motion of the district attorney this case is set for Oct. 23rd, and Nicolas Marquez and Carlos Izquierdo are recognized in the sum of $100.00 each for their appearance as witnesses.

In the District Court of the United States for Porto Rico.

Present: The Hon. Wm. H. Holt, judge.

WEDNESDAY, *October* 22*nd*, 1902.

Entry.

U. S.
vs.
RICARDO AMADO.

This cause coming on regularly for trial both sides answer ready. Comes also a jury duly impaneled and sworn and composed of the following named persons, to wit, E. E. Landis—F. A. McCarthy,—Silvestre Iglesias,—Salvador Frias,—N. Lopez Victoria,—P. Van Fleet,—J. E. Steinacher, S. O'Donnell,—H. A. Dawson, Wm. Miller,—W. F. Gerwig,—and H. H. Allen,—who hear all the evidence in the case, argument of counsel, charge of the court, retire and thereafter return into court the following verdict.

"We the jury in this case find the defendant guilty."

H. A. DAWSON, *Foreman.*

In the District Court of the United States for Porto Rico.

Present: The Hon. Wm. H. Holt, judge.

WEDNESDAY, *October* 22*nd*, 1902.

U. S.
vs.
RICARDO AMADO.

Now comes the defendant herein by his attorneys, Dexter & Hord, and files the following motion,

4 *Motion in Arrest.*

Now comes defendant, Ricardo Amado and moves the court in arrest of sentence herein for the reason that the indictment is insufficient and does not set forth an offense under the statutes of the United States.

DEXTER & HORD,
Attorneys for Defendant.

Whereupon the court overruled said motion, pronounces against said defendant, Ricardo Amado, the following sentence: That he be confined in the penitentiary of Porto Rico for one year and one day and to pay a fine of five hundred dollars ($500.00).

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

OCTOBER 25TH, 1902.

Entry of Order.

U. S.
vs.
RICARDO AMADO.

The warden of the penitentiary is hereby directed mer-ly to retain in his custody Ricardo Amado the defendant herein, and not to subject his person to any of the prison regulations until the further order of this court.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

OCTOBER 27TH, 1902.

Entry of Motion.

U. S.
vs.
RICARDO AMADO.

Now comes the defendant herein by his attorneys, Dexter & Hord, and files motion and grounds for new trial which said motion is overruled.

5 In the District Court of the United States for Porto Rico.

President: Hon. Wm. H. Holt, judge.

Motion for New Trial.

UNITED STATES
vs.
RICARDO AMADO.

Now comes the defendant herein, by his attorneys, Dexter & Hord, and moves the court for a new trial herein because he says that the verdict and judgment herein are contrary to law, because he says:

There *where* no testimony taken, produced or given on the trial

thereof showing that the goods herein charged to have been smuggled were so smuggled as aforesaid, but that to the contrary said verdict and the judgment thereon were based upon the presumption that goods were smuggled.

2. That it was not shown on the trial hereof that this defendant, or any other person whomsoever actually smuggled said goods.

3rd. That it was not shown on the trial hereof that said goods were not and could not have been imported by defendant or any other person for him or from whom he purchased the same.

Wherefore, defendant prays that said verdict and judgment be set aside and held for naught, and for a new trial herein.

DEXTER & HORD,
Attorneys for Defendant.

(Filed Oct. 27, 1902.)

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

OCTOBER 28, 1902.

Entry.

U. S.
vs.
RICARDO AMADO.

The defendant herein by his attorneys Dexter & Hord, files an assignment of errors and a petition for a writ of error.

6 In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

OCTOBER 28TH, 1902.

Assignment of Errors Filed.

UNITED STATES
vs.
RICARDO AMADO.

This plaintiff in error in this cause in connection with this petition for a writ of error, makes the following assignments of error which he avers occurred upon the trial of this cause, to wit:

First. The court erred in entering sentence upon the verdict of the jury rendered in this cause.

Second. The court erred in overruling the motion in arrest of judgment and for a new trial.

Plaintiff in error states that said judgment of this court is erroneous and the said motion in arrest should have been sustained for the reason that the indictment herein does not set forth offense under the laws of the United States.

Third. The court erred in entering up judgment against defendant upon the verdict of the jury for the reason that said verdict was not sustained by the evidence but was contrary thereto.

DEXTER & HORD,
Attorneys for Ricardo Amado.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

OCTOBER 28TH, 1902.

Petition for Writ of Error Filed.

THE UNITED STATES
vs.
RICARDO AMADO.

Ricardo Amado, the defendant in the above entitled cause, feeling himself aggri-ved by the verdict of the jury and the judgment entered on the 21st, day of October, 1902, comes now by Dexter & Hord, his attorneys, and petitions the court for an order allowing him to prosecute a wit of error to the honorable Supreme Court of
7 the United States under and according to the laws of the United States in that behalf made and provided; and also that an order be made fixing the amount of security which the defendant shall give and furnish upon said writ of error, and that upon the giving of such security all further proceedings shall be suspended and stopped until the determination of this writ of error by the Supreme Court of the United States, and your petitioner will ever pray.

DEXTER & HORD,
Attorneys for Defendant.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

OCTOBER 28TH, 1902.

Entry of Order Allowing Writ of Error.

U. S.
vs.
RICARDO AMADO.

Under an indictment for receiving smuggled goods under section 3082 of the revised statutes of the United States, the defendant has

been convicted by the jury and sentenced to one year and a day in the penitentiary and to pay a fine of five hundred dollars. Motion is now made to allow a writ of error, and to fix the amount of the appeal bond. The court has some doubt if an appeal lies. By the act of April 12th, 1900, creating civil government for Porto Rico, a writ of error is allowable to the Supreme Court of the United States as in cases from the supreme courts of Territories, but separate provision seems to have been made as to the different Territories by Congress and there does not appear to be any uniform rule. The matter is, therefore, in some confusion. The offense for which the defendant has been convicted is not a felony, but a mere misdemeanor.

8 Reagan *versus* United States, 157 U. S. R. / 301.

The court thinks it proper to resolve its doubt in favor of the defendant knowing it will be corrected by the Supreme Court of the United States if in error. It therefore grants the writ of error herein, and the amount of the bond is fixed at twenty five hundred dollars, to be taken by and approved by the clerk of this court.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

OCTOBER 28TH, 1902.

Entry of Order.

U. S.
vs.
RICARDO AMADO.

An appeal herein having been allowed and defendant desiring to execute an appeal bond it is now ordered that the marshal of this court bring the defendant from the penitentiary and that the warden thereof deliver him for such purpose and for all other proceedings that may be taken according to law.

In the District Court of the United States for Portò Rico.

Present: Hon. Wm. H. Holt, judge.

OCTOBER 28TH, 1902.

Entry of Order.

U. S.
vs.
RICARDO AMADO.

The defendant, Ricardo Amado having served a citation from the Supreme Court of the United States for an appeal thereto, and said

defendant having executed the appeal bond in the sum of two thousand five hundred dollars, ($2,500.00) with Santiago R. Palmer and Carlos Izquierdo as sureties before the clerk of this court and said appeal having been allowed, the filing and execution of said bond is to operate as a supersedeas and stay of the sentence
9 herein, and the defendant, Ricardo Amado, being present in open court is now released from custody pending his said appeal subject to the conditions of his bond.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

NOVEMBER 14TH, 1902.

Entry of Order.

UNITED STATES
vs.
RICARDO AMADO.

The following agreement is filed herein:

Order Extending Time for Filing Bill of Exceptions.

Now come- defendant by his attorneys Dexter & Hord, and the United States by the district attorney and it is agreed that defendant may have ninety days from this date to file bill of exceptions herein for appeal to the Supreme Court of the United States and subject to the approval of the court.

It is thereupon ordered that defendant may have ninety days from this date to file his bill of exceptions herein.

In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

FEBRUARY 13TH, 1903.

UNITED STATES
vs.
RICARDO AMADO.

Stipulation Extending Time to File Bill of Exceptions.

It is hereby stipulated and agreed that the defendant's time for filing bill of exceptions herein shall be extended to March 25th, 1903.

San Juan, February 10th, 1903.

N. B. K. PETTINGILL,
U. S. Dist. Attorney.

DEXTER & HORD,
Attorneys for Defendant.

10 In the District Court of the United States for Porto Rico.

Present: Hon. Wm. H. Holt, judge.

FEBRUARY 13TH, 1903.

Entry.

UNITED STATES
vs.
RICARDO AMADO.

The parties filed a stipulation herein and in conformity thereto time is extended for presenting and filing bill of exceptions to March 25th, 1903.

11 *Be it remembered*, That at a term of the district court of the United States for the district of Porto Rico, held in the city of San Juan on the twenty-second day of October, A. D., one thousand nine hundred and two, a cause therein pending between The *United States*, as plaintiff and *Ricardo Amado*, as defendant, came on to be heard before the Honorable William H. Holt, judge of the said court, at which time came the said parties, by their respective attorneys, and thereupon the said issues in manner aforesaid joined between the said parties came on to be tried, and the jurors of the jury aforesaid, whereof mention is within made, being called, likewise came and were sworn to try the said issues, upon the merits of said cause in manner aforesaid joined.

And thereupon, the United States, to maintain the issues on its part, produced as a witness one Captain ENRIQUE MOLINA Y ENRIQUEZ who, being first duly sworn testified as follows:

(Direct examination.)

(By DISTRICT ATTORNEY:)

Q. What is your name?
Ans. Enrique Molina y Enriquez.
Q. What, if any, official position do you hold?
Ans. I am a captain in the insular police.
Q. How long have you been such?
Ans. From the 13th of February, 1899.
Q. Where were you stationed in the month of May, 1901.
Ans. In Humacao.

12 Q. During the month of May did you visit the island of Culebra?
Ans. Yes, the latter part of May.
Q. For what reason did you go there?
Ans. Because I had private notice that there was smuggling going on.

Q. What day did you go?
Ans. The 29th or 30th of May.
Q. Do you know the defendant, Ricardo Amado?
Ans. Yes.
Q. Did you see him there at that time?
Ans. Yes.
Q. State what happened with reference to him during that trip?
Ans. Being accompanied by the judge and a couple of policemen I was at Culebra searching several houses, and in the cellar of one of them several bundles were found, and when the owner of the house was asked to whom these bundles belonged——
Q. Who was the owner?
Ans. I do not remember the name now; he is the tall man who is here.
Q. Is it Rufino Ramirez?
Ans. Yes.
Q. Without stating what he said, what did you find there at that house?
Ans. I found several packages that contained beer, vermouth, gin, cognac—French cognac with the mark of Frapin & Co.
Q. Do you remember the different amounts?
Ans. I do not remember now; it has been some time ago.
Q. Did you make a report to the municipal judge?
Ans. Yes, and I gave him everything and he gave me a receipt.
Q. Examine this record (handing same to witness) and see if you can find the record of the articles and amounts made by you, or under your authority?
Ans. Thirteen boxes it says; and four boxes.
Q. This is your own handwriting?
Ans. Yes.
Q. And what is this attached?
Ans. What was delivered to the judge.
Q. Was that list made under your supervision?
Ans. Yes.
Q. Refreshing your recollection from that, and without reading it, state what it was you seized and delivered?
Ans. Some of these bundles contained cognac of Frapin & Co.; other boxes had Danish beer, others gin; and in some kerosene boxes were several dozen bottles of vermouth.
Q. Now, explain to the jury in what situation you found those 13 boxes?
Ans. They were in the cellar of the house and in a corner where they were hidden from sight.
13 Q. In this cellar was the floor even or uneven?
Ans. The town of Culebra is on an inclined plane; this house, the upper part of it, was on a level with the ground and on the other part it was very high, and these boxes were under the upper part, which is the lowest part of the cellar.
Q. From the floor above you mean?

Ans. Yes.
Q. How many feet was it from the ground to the floor of the house in this particular part where you found the boxes?
Ans. Very little; about a meter.
Q. Then, as you went in you could not stand up straight?
Ans. No.
Q. How many doors were there to that cellar?
Ans. One behind the house.
Q. Is that the part where the cellar is the highest?
Ans. Yes.
Q. Were there any windows in it in addition to this door?
Ans. No.
Q. Where did you first see Amado that day?
Ans. In his business house.
Q. What was his business there at that time?
Ans. A retail store for provisions.
Q. Did he sell anything else besides provisions?
Ans. I do not remember.
Q. After you made this seizure, what happened next?
Ans. Ramirez, the owner of the house, came and said that these provisions belonged to Amado.
Q. What was it that belonged to Amado?
Ans. The drinkables there in the cellar.
Q. Where was Amado when Ramirez told you that?
Ans. He had returned with Ramirez from a point opposite the bay.
Q. Was he present when Ramirez made this statement?
Ans. Yes.
Q. What did Amado say about it if anything?
Ans. He said that they were his and that he had placed them there because he did not have sufficient room in his house.
Q. Who was occupying the house in which you found these things?
Ans. Ramirez.
Q. What did you do with these 13 boxes then?
Ans. I sent them to the governor of Culebra. I opened them to find what they contained, and then it was I asked Mr. Amado where he had obtained these drinkables from, and he answered me that as a merchant purchasing in different directions he did not know where he had got them from; I then asked him for his commercial accounts, which he might have, in order to find out from the bills where these articles came from, and amongst the many bills which he brought there were none that corroborated the origin of these articles. Mr. Amado told me that many times he used to get provisions from the capital, and they did not send the bills, and then I embargoed them and reported the case.

14 Q. Who were the two policemen that you had with you that day?

Ans. Nicolas Marqués and another one whose name I do not remember.

Q. Do you know José Iturrundo?

Ans. Yes.

Q. Where was he stationed then?

Ans. He was the commanding officer of the insular police post at Vieques.

Q. What connection, if any, did he have with these goods?

Ans. None.

Q. When were they taken over to Vieques, if at all?

Ans. The same day that I was at the Culebra, which was the 29th or 30th; the next day I returned to Vieques.

Q. What did you do with them after you got to Vieques?

Ans. I left them there with the municipal judge and I came to report the case to my chief.

Q. What year was that?

Ans. Last year.

Q. To what jurisdiction does Culebra belong?

Ans. To the district of Humacao, according to the police division, and according to the judicial division it belongs to Vieques.

Q. And is a part of what larger district?

Ans. Of Porto Rico.

Q. Was Amado's store one of the ordinary ventorillas of the country?

Ans. No, it was a retail provision store.

Q. Did he sell things to drink there?

Ans. Yes.

Q. They sell drinks in all of these smaller stores, don't they?

Ans. In some, not all.

Cross-examination of ENRIQUE MOLINA.

(By Mr. HORD:)

Q. To whom did you make your report?

Ans. To the judge at Vieques, and to my chief.

Q. Who is your chief?

Ans. Frank Techter.

Q. Are you an insular or an United States official?

Ans. I am an insular official.

Q. For what purpose did you make those reports to the municipal judge and to your chief?

Ans. I reported to the chief in order that he might place the case before the Federal court, or the proper tribunal.

Q. Why did you seize these goods?

Ans. Because I thought they were contraband.

15 Q. What reason did you have for believing that?

Ans. Many—as I will show you. The boxes containing these drinkables were completely new. They had no marks of any kind. The drinks that they had are not those that are known to this country,

because from the documents which were in the power of the governor of Culebra, or in the policies of coast-wise vessels there was no merchandise of that kind from any vessel introduced from San Juan, Porto Rico, because Mr. Amado had no documents proving that he had received such things; and because having room in his house for them, Amado put these things in a place where they could be stolen.

Q. Is that all?

Ans. Yes.

Q. One of your reasons is that these goods were in new boxes?

Ans. Yes, and they did not have any mark as to who was the sender and who was the receiver.

Q. If they had no marks how do you know they were smuggled?

Ans. For that very same reason.

Q. Because they had no marks?

Ans. Because all the boxes had a piece cut off, and in some places so badly taken off you could see there: "A. Lugo y Cie., St. Thomas."

Q. So that had a mark did it?

Ans. It was rubbed out a little but you could see it.

Q. And when you say it had no mark at all that is not true, is it?

Ans. I did not say it had no mark at all.

Q. I understood you that way?

Ans. In saying that they had no marks or counter-marks I mean to say that they were not clear, and on account of their having a piece split off there was no mark.

Q. Then the marks were broken off?

Ans. Yes.

Q. What drinks were those?

Ans. Beer, vermouth, gin and cognac.

Q. Have you ever seen any beer in this town?

Ans. Yes; I have seen it several times.

Q. Did you ever drink any vermouth in this town?

Ans. Several times.

Q. And other places on the island, as well?

Ans. Yes, but I have never taken cognac of Frapin & Co.

Q. You have drunk gin also?

Ans. Also.

Q. But you never drank any Frapin cognac?

Ans. Never in Porto Rico but several times in St. Thomas.

Q. The- because I understand you to say, that you have never taken any Frapin cognac in Porto Rico there is none here?

Ans. About twelve or fourteen years ago this kind of cognac used to come to Porto Rico.

Q. Was it all used up then?

Ans. Some boxes might have remained, but on account of the lapse of time the boxes would not be as new as they were, nor the bottles, nor the corks and wires. The wires would be rusted and injured.

16 Q. Have you gone over the custom house records for the last three or four years?

Ans. No, sir; that is the duty of the attorney.

Q. Have you made it your business to go to the different commercial houses of Porto Rico and find out if they have not imported any brandy like that?

Ans. I am not an agent of the internal revenue; but an insular policeman.

Q. Why do you say there is no such cognac here if you do not know it?

Ans. Yes, I know there is no such cognac in existence in Porto Rico.

Q. How do you know that?

Ans. Through curiosity I have asked in several places in the island and could not find it.

Q. Then you have asked at the different stores have you?

Ans. Yes.

Q. Have you asked at all of the stores?

Ans. No.

Q. How do you know but what at some of the stores you have not asked there might be some of this cognac?

Ans. I do not know; but if you find it anywhere in Porto Rico it is introduced as contraband.

Q. How do you know that?

Ans. Because the only houses that introduce these articles are Cereceda Hermanos and Luiña y Cia., and I have asked them and they said they did not introduce it.

Q. What kind of a house was this you found these goods in?

Ans. A frame house.

Q. How many stories did it have to it?

Ans. One.

Q. In front?

Ans. Yes.

Q. In the rear end how many stories?

Ans. It had a little cellar there.

Q. Was there any wall around the lower side?

Ans. Yes.

Q. So that that house stood perfectly flat and erect?

Ans. Yes.

Q. And starting from the front end the ground sloped down?

Ans. You cannot see the decline unless you go under the house.

Q. But from below you can see it?

Ans. Yes.

Q. This door that you spoke of awhile ago, was that in the cellar?

Ans. Yes, for through it you go into the cellar.

Q. Do I understand that that door is on the rear of the house?

Ans. Yes.

Q. That door opens out flat on to the ground does it not?

Ans. No.

Q. If a person was in that cellar and wanted to go out would he have to go down a sort of steps to get out?

Ans. No.

17 Q. So you go directly out on the ground?

Ans. Yes, there is a little something there to enable the door to close.

Q. In what condition was that door when you went there?

Ans. It was shut and nailed up with a board from the outside; from the inside you could not nail it.

Q. Was that the only entrance to the cellar?

Ans. From the outside that was the only one; if they had from the inside some hidden entrance I do not know it.

Q. As a matter of fact did not one of these policemen open another door, what we call a cellar-door, in the floor of the house leading into that place?

Ans. No, not before me; we all went in through that door.

Q. What did you find in that place besides these thirteen boxes?

Ans. Nothing more.

Q. Did you not find some tobacco there?

Ans. Upstairs in the house of Ramirez there was some?

Q. How much was it?

Ans. I did not weigh the tobacco that was manufactured and did not count the other that was not manufactured.

Q. Did you find any hediondilla there?

Ans. I do not remember.

Q. When you asked Amado about these thirteen boxes he stated that they belonged to him?

Ans. No, he did not tell me such a thing; Ramirez told me that they belonged to Amado and then he confirmed the statement.

Q. That was the first time you asked Amado about it?

Ans. In respect to this affair, yes.

Q. How far is that house from Amado's store?

Ans. More or less about eighty or a hundred steps.

Q. Where was Ramirez when you went to the house?

Ans. Amado took a boat and went out to fetch him and they returned again.

Q. Where was Ramirez?

Ans. He was on the other side of the bay because Amado went there to get him.

Q. And as soon as he got back you asked him to whom these goods belonged?

Ans. Yes.

Q. And he told you that they belonged to Amado, did he?

Ans. That Amado had put them there?

Q. And Amado said the same thing?

Ans. Yes.

Re-direct.

(By DISTRICT ATTORNEY:)

Q. Did I understand you to say that there was room in Amado's store for those thirteen boxes if he wanted to put them there?
Ans. Yes.
Q. Plenty of room without crowding?
Ans. There is room enough for them but not too much as the place is not large.

Witness retired.

18 And thereupon, the plaintiff, The United States, to further maintain the issues on its part introduced as a witness one NICOLÁS MARQUÉS who being duly sworn, testified as follows:

(Direct.)

(By DISTRICT ATTORNEY:)

Q. What is your name?
Ans. Nicolás Marqués.
Q. What is your occupation?
Ans. I am an insular policeman.
Q. How long have you been such?
Ans. Three and a half years.
Q. Where were you stationed in May, 1901?
Ans. In Vieques.
Q. Do you remember going to Culebra in the latter part of May?
Ans. Yes, on the 28th of May I went there with Capt. Molina, Alfonso O'Neill, and one called Le Guilleaux.
Q. Do you know Ricardo Amado?
Ans. Yes.
Q. Did you see him in Culebra then?
Ans. Yes when we were there.
Q. What did you do, as a policeman, while you were in Culebra?
Ans. I went there under the orders of Capt. Molina, and we arrived there and Capt. Molina went to the house of Mr. Amado and from there he went to the house of José Santana, and then he went to the house of Ramirez, and by order of the judge the house was searched and we found in the cellar of that house thirteen boxes of things to drink, and they resulted to be the property of Mr Amado, according to his confession, and then Capt. Molina ordered that these boxes be removed to the house of the delegate.
Q. Describe particularly where these boxes were found?
Ans. In the cellar of the Ramirez house.
Q. What was the shape of this cellar?
Ans. In front the house was on a level with the earth, and then behind the earth is lower, and it is there that we found the boxes.
Q. In what part of the cellar did you find the boxes?

Ans. First, there was some empty boxes, and then we found these full boxes.

Q. Were they in the part of the cellar that was the lowest or in the part where the ground approached nearest to the floor of the house?

Ans. Nearest to the floor.

Q. How high was it from the ground to the floor of the house?

Ans. I cannot say exactly, but I know we got there stooping.

Q. What did you notice as to the condition of the boxes?

Ans. They were on the floor.

Q. I mean the boxes themselves; how many marks did they have?

Ans. I did not notice any marks; we took them out and the Captain then took note of them.

19 Q. Did you see the boxes opened?

Ans. Yes.

Q. What kind of liquor did they contain?

Ans. Some had gin, others cognac and I think vermough also.

Cross-examination of NICOLÁS MARQUÉS.

(By Mr. HORD:)

Q. How many bottles of vermough were there?

Ans. I do not remember the quantity; we opened the boxes but I cannot say exactly the quantity of vermough, or the other There were thirteen boxes.

Q. Did you notice any of these boxes broken?

Ans. No, I did not see any broken.

Q. Did the boxes show any sign of having had a part of them torn away?

Ans. Torn open.

Q. No, not open, but as if a piece containing a mark of some kind had been torn off?

Ans. I did not fix my attention to that detail.

Q. How many bottles of beer were there?

Ans. I do not know, but I know they had beer, but I cannot remember the bottles. I told the Captain there was so much of this and so much of that.

Q. How did you get into the cellar?

Ans. In searching the house we found that the house had some lower part which was locked or fastened, and then the Judge said we could go in there also and the Captain ordered us in there.

Q. Where did you get in?

Ans. Through a little door there in front.

Q. How big a door is that?

Ans. About two Castilian yards.

Q. What do you mean by the door in front?

Ans. I mean to say in the rear of the house.

Q. Did I understand you to say that these goods were put in the center of this cellar?

Ans. Yes, on entering they were near *near* it.

Q. Very near the door?

Ans. It may be said they were near.

Q. Was that the only opening to that cellar you know of?

Ans. So far as I know that was the only one.

Q. How was the door fastened?

Ans. With a cross-piece about five inches wide.

Q. On the outside?

Ans. Yes.

Q. You took that off and went in the door?

Ans. Yes, we took off the board and went in.

20 Redirect:

Q. You say you saw some empty boxes in the cellar?

Ans. Yes.

Q. Were they nearer the door than the full boxes were?

Ans. Yes, they were.

Q. Do you remember seeing any boxes there such as kerosene or oil comes in?

Ans. Empty, do you mean?

Q. No, they had something in them?

Ans. Some of these liquor boxes it appears were used as kerosene boxes before; they were these tall boxes like kerosene boxes.

Q. What kind of liquor was in them?

Ans. The gin boxes were square boxes; and then there was cognac and mermouth.

Questions by the COURT:

Q. How many of these empty boxes were there?

Ans. I did not count them but I knew they were empty boxes.

Q. Were there five, six or a dozen?

Ans. There were three or four, or something like that.

Q. What kind of boxes were they—new ones or old ones?

Ans. They looked like boxes that had been half used.

Q. What was the condition of these 13 boxes, were they new or old?

Ans. They looked like new boxes.

(Witness retires.)

And thereupon, the United States, to further maintain the issues on its part, produced as a witness one RUFINO RAMIREZ who, being first duly sworn, testified as follows:

(Direct.)

(By DIST. ATT'Y:)

Q. What is your name?
Ans. Rufino Ramirez.
Q. Where do you live?
Ans. In the island of Culebra.
Q. Do you know the defendant, Ricardo Amado?
Ans. Yes.
Q. How long have you known him?
Ans. During my residence there, and also for three or four years previous, which would make a total of six or seven years.
Q. Where were you living in the month of May of last year?
Ans. In Culebra.
21 Q. Do you remember the occasion of the visit of Captain Molina and some policemen to your house then?
Ans. Yes.
Q. What did they find there?
Ans. Some effects.
Q. What kind?
Ans. Some boxes that contained several things.
Q. In what part of your house were they?
Ans. Under the house.
Q. To whom did they belong?
Ans. To Mr. Amado.
Q. How long had they been there previous to that time?
Ans. Two or three months, maybe four, more or less.

Cross-examination of RUFINO RAMIREZ.

Q. Do you live in that house?
Ans. I used to live there.
Q. Are you married or single?
Ans. Married.
Q. When did you first see those boxes?
Ans. When I arrived from my work in the country.
Q. Where were the boxes then?
Ans. In my house.
Q. Where were they—in the lower part or upper part of the house?
Ans. In the lower part of the house.
Q. In what is known as the cellar?
Ans. Yes, we call it a cellar because it is under the house.
Q. How did they get there, if you know?
Ans. Mr. Amado put them there.

Q. How do you know that?

Ans. Because afterwards he let me know.

Q. Did he let you know before or after these policement went there?

Ans. Before.

Q. How long before?

Ans. Three or four months—something like that.

Q. At the time that you lived in that house what did you use the upper floor for?

Ans. For nothing as I had nothing to put there.

Q. Did you live there with your family?

Ans. With my wife—I have no children.

Q. What were these goods doing there?

Ans. They were there because there was no room for them in the house of Amado as he had a great many provisions in his house.

Q. Were you ever in Amado's store?

Ans. Yes.

Q. Were you there about the time these goods were sent to your house?

Ans. When they were sent.

Q. Yes, more or less about that time?

Ans. I used to buy at his store.

Q. I am referring to the date when these goods were sent
22 to your house. What was the condition of Amado's house so far as being crowded, or not crowded?

Ans. There was little room.

Q. So that the store was crowded, was it?

Ans. It is a small place and he lives there in the house.

Q. What kind of business did Amado do then?

Ans. He used to be a merchant.

Q. Selling all kinds of goods?

Ans. Of provisions and liquors; I do not know about drygoods.

Q. Do you recollect when the American fleet was off Culebra some months ago, last year?

Ans. Last year I was living in the country.

Q. Do you recollect when the American fleet was there last year?

Ans. Yes, I remember it, more or less.

Q. Did you see any of the sailors from that fleet there buying goods from Amado's house?

Ans. The same as they did at the other stores there.

Q. What were they buying?

Ans. What they were buying I do not know; all I know is that they were there in the house.

Questions by the COURT:

Q. Did you own the house where you lived, or did you rent it?

Ans. The house where I was living belonged to my uncle Miguel Ramirez. I had no place to live and he gave it to me to live in.

Q. When these boxes were brought there were you at home?

Ans. I was in the country at my work, but yet I was living there, my wife being sick.

Q. Did you give him any permission to let these boxes be brought there?

Ans. After he told me of it I gave him the permission because he is a man of my confidence.

Q. Did you give him the permission before they were brought there?

Ans. No, sir he did it in the confidence he had in me.

Q. Do you know what had been in those empty boxes that were there when Capt. Molina went in there?

Ans. I did not have that curiosity.

Q. Do you know whether any empty boxes were brought there?

Ans. They were all full because I saw them afterwards being brought out by order of Capt. Molina, and then being sent to the governor of the island.

Q. At that time were there any empty boxes in the cellar?

Ans. There were some remnants there of old wine casks that belonged to somebody who was a merchant in that house before.

23 Q. I am talking of boxes?

Ans. I have not seen any.

Q. You had no knowledge or notice that those boxes were to be brought there before they were brought?

Ans. No, I had no knowledge of it as I was at my business in the country.

Re-cross-examination:

Q. How long had the boxes been in your house when Amado told you about it?

Ans. He put them there in the afternoon and when I came from the country about seven or eight o'clock he met me and told me of it.

Q. The same day?

Ans. Yes.

Re-direct:

Q. How soon after the boxes were put down there did you go there to look at them?

Ans. The next day or two or three days afterward. It was precisely on a Sunday when I went down there because I was at home and had nothing to do.

Q. What did you look at them for?

Ans. He had told me they were there and I went there to see them.

Q. You had curiosity enough to look at the boxes but not enough curiosity to see if there were any empty ones?

Ans. No, sir.

Q. How long had you been in the country when you came

back that night and Amado told you that the boxes were there?

Ans. My custom was to go into the country to work at four or five in the morning and to return home about six or six thirty or seven o'clock in the evening, as I was on foot and had no horse.

Q. How did you know the boxes were put there in the afternoon then if you were in the country?

Ans. Because that gentlemen told me.

Re-cross-examination:

Q. They were not there when you went to work in the morning were they?

Ans. No, sir.

(Witness retired.)

24 And thereupon the United States, to further maintain the issues on its part, produced as a witness one THOMAS M. COOK who being duly sworn, testified as follows:

(Direct.)

(By DIST. ATT'Y:)

Q. What is your name?

Ans. Thomas M. Cook.

Q. In the year 1901 what if any official position did you hold?

Ans. I was special deputy collector of customs.

Q. During that time did you, at my request, make a search of the custom house records in regard to certain matters?

Ans. I did.

Q. From that search you made, please state whether or not any importation was made whatever from St. Thomas by a man by the name of Ricardo Amado?

Ans. There was not.

Q. Was there any importation from St. Thomas or from that direction of 250 bottles of Holland gin; 60 bottles of vermouth; 40 bottles of brandy; 46 bottles and 72 half bottles of Danish beer?

Ans. For the period of time covered by the examination there was not.

Q. What was that period?

Ans. I think I went over something like six or eight months mor- a year.

Q. Do you remember what month it ended in?

Ans. It was about a year back.

Q. Was it at or near the time of a seizure of certain goods?

Ans. For about a year previous to that time.

Q. How long were you in that position?

Ans. For about three and a half years, or over; but I will state this: during the war and soon after the occupation of the island I was known as the deputy of Porto Rico; under the civil government the position is known as special deputy. I have been in the custom house service since the fall of 1898.

Q. Can you state from your recollection whether *or* brand of cognac called "Frapin & Co., is an article of importation into this island? I will ask you first, whether practically all invoices of foreign importations went through your hands?

Ans. Most of them.

Q. Do you remember or can you state whether there was any article of importation as a brand of cognac known as "Frapin & Co."?

Ans. I can just state this in a general way; that at the time my attention was called to it by this case I think I said—or possibly it was somebody else—that I had never seen that brand before imported into Porto Rico.

25 Cross-examination of THOS. M. COOK:

Q. You say you have been in the custom house since about the 1st of January, 1899?

Ans. Yes.

Q. For how long?

Ans. For about three and a half years.

Q. You say you saw most of the invoices of importation?

Ans. Most of them.

Q. And some you did not see?

Ans. Necessarily so.

Q. You made this examination, you said, covering six months or a year?

Ans. Yes.

Q. What invoices did you examine?

Ans. Importations from St. Thomas, Danish West Indies.

Q. Do I understand you to say that this examination covered all importations from St. Thomas for a year previous to that time?

Ans. It may be a year or more, or less than that.

Q. You limited the examination to importations from the Danish West Indies?

Ans. Yes, from St. Thomas.

Q. Did you limit it only to St. Thomas?

Ans. To the Danish West Indies; it is all under one head.

Q. You did not examine importations from any other port?

Ans. No.

Q. Did you examine importations by any one from any French port?

Ans. No, I do not suppose I did.

Q. So far as you actually know, either this defendant or any one else might have imported from France direct—even during the

time covered by your examination—of the brandy mentioned in this count?

Ans. Possibly so; yes.

Q. Do you know the firm of A. Lugo & Company, and where they do business?

Ans. I do not.

Questions by the COURT:

Q. Under the laws and regulations could any importation be made into Porto Rico unless it came through your office?

Ans. The importation might be made to a sub-port, but the declaration would come here and the statistics would be taken from that.

Re-cross-examination:

Q. You say you did not examine some of these declarations?

Ans. No.

Q. And they might have included some of this property?

Ans. They might have included importations by this gentleman from some other country than St. Thomas. All importations
26 from St. Thomas would be placed in the statistical record under the head of "Danish West Indies," and that would show who imported them. In looking up the matter of importations from St. Thomas we simply went to the page and found no liquor had been brought in for a year.

Q. You- examination would not show that the cognac had been brought from France, or the beer from Denmark, or the vermouth from Spain, or the gin from Holland direct?

Ans. The examination I made would not show that at all.

(Witness retires.)

DISTRICT ATTORNEY: We desire to prove further that the firm of A. Lugo & Company did business in Saint Thomas.

Judge HORD: We admit that they did business in St. Thomas.

And thereupon the United States rested its case.

Whereupon, the defendant, Ricardo Amado, to maintain the issues on his part, produced as a witness one CARLOS YZQUIERDO who, being duly sworn, testified as follows:

(Direct.)

(By Judge HORD:)

Q. What is your name?

Ans. Carlos Yzquierdo.

Q. Where do you live?

Ans. In San Juan.

Q. How long have you lived here?

Ans. I was born here.
Q. Do you know Ricardo Amado?
Ans. Yes, for more than 15 years.
Q. How long has Amado lived at Culebra?
Ans. He has lived a great many years there, but I do not recollect how many exactly.
Q. Do you know what his business has been there?
Ans. He has been a merchant in provisions and liquors.
27 Q. Do you know where he bought his stock of goods?
Ans. Here in San Juan.
Q. Who acted as his agent in buying, or did he order direct?
Ans. I have been the purchaser for him several times.
Q. Do you mean to say you purchased goods for him here and shipped them to Culebra?
Ans. Yes.
Q. What did those purchases you made consist of?
Ans. Provisions of various kinds and liquors.
Q. What kinds of liquors?
Ans. Beer, gin, brandy, vermouth.
Q. When you say brandy do you mean cognac?
Ans. Yes, that is it exactly.
Q. Do you know or have you ever seen brandy or cognac of the brand "F. Frapin & Company" in San Juan?
Ans. It may have been here in town.
Q. Do you know whether cognac of that brand of Frapin & Company has ever been in San Juan or have you ever seen it here?
Ans. Maybe so.
Q. Do you know whether that brand is manufactured here?
Ans. The cognac I bought for him I did not buy it as imported cognac but cognac made in the country.
Q. Did you, at any time within the last three or four years, buy any cognac for the defendant?
Ans. Yes.
Q. What kind was it; what brand?
Ans. I cannot fix the mark, but I bought different kinds.
Q. You have already testified that you bought for him beer, vermouth and gin?
Ans. Yes.
Q. During the same period?
Ans. Yes.

Cross-examination of CARLOS YZQUIERDO:

Q. Do you know when you sent his last order to him?
Ans. I do not remember.
Q. More than two years ago?
Ans. I do not think it is as much as that.
Q. Have you no record by which you can tell exactly when it was?

Ans. It is very little more than a year.

Q. Have you any memorandum or books by which you could tell more particularly?

Ans. No.

Q. What did you send him the last time?

Ans. I cannot tell what I sent him now; I cannot remember it.

28 Re-direct examination of CARLOS YZQUIERDO:

Q. Can you identify this list I now hand you?

Ans. Yes.

Q. Did you write them?

Ans. Yes, I have written these.

Q. Look at these lists and refresh your memory from them and say if you can recollect what you shipped on those dates. Examine the list carefully and then tell me whether at that date you shipped some cognac or vermouth to this defendant?

Ans. Yes, on the 4th of December I sent a box of cognac.

Q. Now the other one?

Ans. On the other one there is a box of cognac and a box of vermouth.

Q. How much in a box?

Ans. Twelve bottles.

(Witness retired.)

And the foregoing evidence was all the evidence in said case.

And the said parties, having concluded and submitted their testimony and the several matters aforesaid, and having, by their respective counsel, submitted arguments to the jury, the said judge, before said jury retired to consider of their verdict, did then and there of his own motion charge and instruct the jury as follows:

29 (*Charge of the Court.*)

GENTLEMEN OF THE JURY: The Government of the United States in its wisdom has seen fit to impose an impost upon the importation of certain foreign articles into the United States or Porto Rico. I need not enter into detail as to why this has been done, but among other reasons it has been done to permit the growth of our own country and the manufacture of articles of that character, and another reason is it helps to support the expenses of the Government.

For instance, up to the date of the repeal of the act existing between the United States and Porto Rico, the government of Porto Rico was half supported by the customs duties; and since the repeal of the act imposing duties on articles passing between the United States and Porto Rico, leaving duties upon articles from foreign countries only, the government of Porto Rico has been supported to about three-eighths of its expenses of government. Hence, you see

the importance of enforcing this law of having duties upon foreign articles paid.

The defendant in this case is not charged with importing these articles named in the indictment; he is not charged with bringing them into Porto Rico, or into Culebra, the latter island being a part of Porto Rico; but he is charged with unlawfully receiving, concealing or facilitating the transportation, concealment or sale of this merchandise after it was brought into the island of Porto Rico. In other words, under the law if goods are smuggled into Porto Rico, then any one, after they are so smuggled, assists in concealing, or transporting them, or assists in selling them, or assists in any way in reference to them, he is guilty of an offense under the law.

Now, a statute of the United States provides that any person
30 who shall receive, conceal buy, sell, or in any way facilitate the transportation, concealment or sale of such merchandise—that is smuggled merchandise—without the payment of duty and without invoicing it, etc., shall be guilty of an offence.

The defendant comes before you with the presumption in law that he is innocent until he is shown to be guilty; until it is shown by the Government that he is guilty beyond a reasonable doubt it is your duty to acquit him. That presumption of innocence does not rest upon a mere chimera of doubt, but it is a question with you whether, from all the testimony in the case and from a sensible view of it, he has been proven guilty beyond a reasonable doubt. Now, a man may be proven guilty of an offense by positive testimony. If a man is indicted for murder you may have positive testimony as to it from the man who saw him stick a knife, for instance, in another man and kill him; or, you may have what is known as circumstantial evidence. He may have been found in the neighborhood, he may have made threats against the dead man, he may have been found there with his clothes bloody, and other circumstances which would tend to show his guilt. It has been often stated that circumstances cannot lie—that they are stronger than positive proof. Now, abstractly and in itself, that is true, that circumstances cannot lie, but the only danger is, as I have said before to juries, a jury may draw wrong inferences from circumstances. A fact may be proven and that is true, but you may draw a wrong inference from it. It is necessary, where the testimony is entirely circumstantial, that you be careful in drawing your inferences from them, and that it be proved to your satisfaction that the man is guilty of the offense charged. In drawing these inferences, of course you must look at the matter in a reasonable, common-sense manner. You are the judges of the credibility and weight of the testimony. You accept the law absolutely from the court; you must do that. You are the sole judges of the facts in the case and what they prove, and I have no right to take the consideration of the testimony away from you, but you accept the law as given you
31 by the court. You are to determine whether, from all the testimony in this case, this defendant has been proved guilty

Not as, perhaps, to all of these acts charged, because that is not necessary, but to either of them or any part of them, whether he is guilty—they being smuggled goods—of having concealed them or facilitated their transportation, or anything of that character. If you, and you believe it to the exclusion of a reasonable doubt, you should find him guilty.

Counsel in the case have, in the main, detailed to you the testimony. You have listened carefully to it and I am not going over it all again. It tends to show, however, that there were some goods in this cellar. There is no conflicting testimony about that. You can call it what you please—a cellar, or what-not. It tends to show that there were thirteen boxes of liquors in that place—whatever you may call it. The testimony is uncontradicted that this defendant put them there. The testimony tends to show that the place was nailed up. It shows that it had a single door. The testimony is somewhat conflicting as to whether these goods were placed in that place, whether they were clear back, as far as they could be placed, or were in the center of the room or where they were. You are to judge of that. There is testimony tending to show that in front of them, or after you entered through the door, there were some empty boxes or some parts of casks. You are the judges of that testimony. You are the judges and must draw your own inferences as to whether that was a usual or unusual place to put these goods and keep them—whether there was any need on the part of the defendant to put them there. You are to determine from all the testimony whether these were smuggled goods. We know, as a matter of law, that St. Thomas was a free port, and that the duties on these articles were pretty high here. If these goods came from St. Thomas then they were brought into St. Thomas free from some other foreign country and then if they were gotten into Porto Rico without the payment of duty and smuggled in, why, of course they came in here free. There is some testimony tending to
show that these boxes had certain marks on them partly re-
32 mov-d and these marks showed that the boxes were from St.
Thomas, and from the firm of Lugo & Company. You are the judges of all of that testimony. You are also the judges of the weight and force to be given to the testimony offered by the defendant, that he had bought some articles—three boxes, perhaps two of one kind of liquor and one of another, from San Juan here, and they were sent to him in December 1900 and January 1901. You are the judges of all of that testimony, and from all the testimony, looking at it in a common sense way, you are to determine whether these were smuggled goods. If you believe, beyond a reasonable doubt, that these goods were smuggled—no matter who had smuggled them, that makes no difference—that if they were in the possesion of this defendant, they being smuggled goods, if you believe that to the exclusion of a reasonable doubt, why then that is sufficient evidence to authorize his conviction, that is unless rebutted. That is liable to be rebutted. That possession by him, while it is a presumption against him, if there was nothing else in the case, and if you should

believe from the evidence, to the exclusion of a reasonable doubt, that they were smuggled goods and that they were found in his possession, why that fact alone in the absence of anything else, is sufficient to authorize his conviction, but, he may explain to you how they came into his possession by other testimony, as has been attempted to be done by him by saying that he bought goods in San Juan. He has the right to explain that presumption which arises against him. You are to take into consideration, of course, the quantity of these articles, and in fact, without detailing the testimony, you are to take into consideration all the testimony that has been allowed to go to you in this case upon the question of whether the defendant is guilty of the charge or not. I repeat, gentlemen, if you are satisfied from all the evidence to the exclusion of a reasonable doubt that these were smuggled goods, and if you further are satisfied from the testimony to the exclusion of a reasonable doubt that this defendant was in possession of
33 them, you may find a conviction upon that alone unless he has satisfactorily explained to you how he came into possession of them.

I believe, so far as I now recollect, that this is all I desire to say to you, and perhaps it is all I need to say, unless counsel has something further.

Judge HORD: The defendant is charged in this case with *knowingly* concealing smuggled goods. In the court's charge we think that practically the element of "knowingly" has been taken from the jury. We therefore ask the court to charge upon this phase of the case that even if the jury should believe these goods were smuggled, they would, notwithstanding that, have also to believe that the defendant knew this fact.

The COURT: I think I have, in substance, told you that, gentlemen of the jury. That is correct under the statute, and I think I have told you that the element of knowledge must enter into the case. I say to you, gentlemen, and repeat to you that you must be satisfied to the exclusion of a reasonable doubt that these were smuggled goods and you must also be satisfied to the exclusion of a reasonable doubt that the defendant knew—from all the circumstances of the case or in any way—that he knew they were smuggled goods, and if you find that he was in possession of these goods, knowing that they were smuggled goods, then I say to you that so far as being engaged in the sale, concealment or transportation of them you have the right to find him guilty upon the fact that he was knowingly in the possession of such goods, they being smuggled; but that possession by him may, of course, be explained by any other testimony in the case.

34 Judge HORD: We ask your honor to charge the jury that the fact that goods were smuggled or not could not be presumed but must be proved.

The COURT: I have already told the jury that.

And thereafter the jury retired to consider of their verdict and returned into court a verdict finding the defendant guilty, as is more fully shown by the record in this case.

And forasmuch, as the matters set forth do not fully appear of record, the defendant tenders this his bill of exceptions, and prays that the same may be signed by the judge pursuant to law, which is done accordingly this 24th day of March, 1903.

(Signed) WM. H. HOLT, *Judge.*

35 In the District Court of the United States for Porto Rico.

UNITED STATES
vs.
RICARDO AMADO.

I, Ricardo Nadal, clerk of the district court of the United States for the district of Porto Rico, do hereby certify *that* the foregoing thirty-four (34) typewritten pages, numbered from one to 34, inclusive, to be a full true, and correct copy of the record and proceedings in the above and therein entitled cause as the same remains of record and on file in the office of the clerk of said court, and that the same constitute the return to the annexed writ of error.

I further certify that the cost of the foregoing return to writ of error is $11.85 and that the same amount was paid by Dexter & Hord, attorneys for plaintiffs in error.

In testimony whereof, I have hereunto set my hand and affixed the seal of said district court, this sixth day of April A. D. nineteen hundred and three.

[Seal United States District Court for the District of Porto Rico.]

RICARDO NADAL,
Clerk of said Court,
By FRANK ANTONSANTI,
Deputy Clerk.

36 In the District Court of the United States for Porto Rico, Sitting at San Juan, October Term, 1902.

THE UNITED STATES
vs.
RICARDO AMADO.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable William H. Holt, judge of the district court of the United States for Porto Rico, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment and sentence in the cause which is before you in said court, being the cause of The United States *vs.* Ricardo Amado, a manifest error has happened, to the prejudice and damage of the said defendant, Ricardo Amado, as is said and appears by the petition herein. We being willing that error, if any has been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, that if sentence be therein entered, that then, under your seal distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the justices of the Supreme Court of the United States, together with this writ, so as to have the same at the said place thirty days from this date, that the record and proceedings aforesaid being inspected the said Supreme Court of the United States may cause further to be done therein to correct those errors what of right and according to the laws and customs of the United States should be done.

Witness, the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 28th day of October, 1902.

Attest my hand and seal of the district court of the United States for Porto Rico at the clerk's office at San Juan, Porto Rico, on the day and year last above written.

RICARDO NADAL,
Clerk of the District Court of the United States for Porto Rico,
By H. H. SCOVILLE, *Deputy.*

Allowed this 28 day of October, 1902.

WM. H. HOLT,
Judge of the United States District Court for Porto Rico.

No objection.
N. B. K. P.

37 [Endorsed:] Cr. 262 United States *vs.* Ricardo Amado. Writ of error. Oct. 28 Filed clerk's office, United States district court, Oct. 28, 1902. Ricardo Nadal, clerk of the court. Frank Antonsanti, D. C.

38 UNITED STATES OF AMERICA, *ss:*

The President of the United States to the United States of America and N. B. K. Pettingill, district attorney of the district court of the United States for Porto Rico, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States to be held in the city of Washington, D. C., within thirty days from the date of this writ, pursuant to a writ of error filed in the office of the clerk of the district court of the United States for Porto Rico in the case of The United States—*versus*—Ricardo Amado, and you, as defendant in error, shall show cause, if any there be, why the judgment in the said writ of error should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, this twenty-seventh day of October, A. D. 1902, and of the Independence of the United States the one hundred and twenty-seventh.

WM. H. HOLT,
Judge District Court of the United States for Porto Rico.

Attest:
RICARDO NADAL, *Clerk,*
By H. H. SCOVILLE, *Deputy.*

Service of above citation accepted on behalf of the United States this 28th day of October, 1902.

N. B. K. PETTINGILL,
U. S. Attorney.

[Endorsed:] No. 262. United States *vs.* Ricardo Amado. Citation.

39 [Endorsed:] No. 262. Criminal. In the district court of United States, for Porto Rico. —— term 190–. United States of America *versus* Ricardo Amado. Transcript of record.

Endorsed on cover: File No. 18,930. Porto Rico D. C. U. S. Term No. 33. Ricardo Amado, plaintiff in error, *vs.* The United States. Filed May 14, 1903. File No. 18,930.

In the Supreme Court of the United States.

OCTOBER TERM, 1904.

RICARDO AMADO, PLAINTIFF IN ERROR,
v.
THE UNITED STATES. } No. 33.

STATEMENT OF THE CASE.

This case is brought here on a writ of error to review the judgment of the district court of the United States for the district of Porto Rico. The plaintiff in error, Ricardo Amado, on the 27th day of October, 1902, was convicted in the United States court for the district of Porto Rico for having violated section 3082 of the Revised Statutes of the United States. The indictment charges him with having unlawfully received and concealed certain merchandise which had been imported into the district of Porto Rico contrary to law, the custom duties never having been paid. The court sentenced him to the penitentiary for one year and one day, and to pay a fine of $500. A motion for a new trial was thereafter made upon the ground that the evidence did not show that the goods described in the indictment had ever been smuggled into the island of Porto Rico. This motion was overruled by the trial

court, and the case is here for review upon three assignments of error.

Before considering the questions of law raised by the assignments of error, we desire to make the point that this court is without jurisdiction to review this case.

I.

THE QUESTION OF JURISDICTION.

The Supreme Court of the United States is without jurisdiction to review a judgment of the United States district court for the district of Porto Rico, except in those cases "Where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied."

The trial court in its order allowing this writ of error expressed a doubt as to whether a writ of error would lie in this case to the Supreme Court of the United States, under section 35 of the Foraker Act of April 12, 1900 (31 Stats., 77, 85), but thought it proper to resolve that doubt in favor of the defendant, knowing that it would be corrected by this court if in error. (Rec., p. 7.)

The authority of law, if any exists, for bringing this case here by writ of error must be found in section 35 of the act above referred to. That section is as follows:

> That writs of error and appeals from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same

> cases as from the supreme courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied; and the supreme and district courts of Porto Rico and the respective judges thereof may grant writs of habeas corpus in all cases in which the same are grantable by the judges of the district and circuit courts of the United States. All such proceedings in the Supreme Court of the United States shall be conducted in the English language. (31 Stats., 85.)

It is manifest that this law authorizes an appeal or writ of error only in those cases in which "the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied." We have, therefore, only to examine the assignments of error for the purpose of ascertaining whether this case can be brought within any of the aforesaid provisions of the law in which an appeal is specifically authorized.

The assignments of error, while three in number, practically present but two questions for consideration: First. That the indictment does not state an offense under the laws of the United States. Second. That the verdict rendered by the jury was not sustained by the evidence, but contrary thereto. (Rec., pp. 5–6.)

It is therefore manifest that no constitutional question is involved in this case, nor any question arising

under a treaty of the United States. We must therefore determine whether "an act of Congress is brought in question and the right claimed thereunder is denied;" and if we can demonstrate that no act of Congress is brought in question by this record, it conclusively follows that this court is without jurisdiction to review this case.

The law under which the plaintiff in error was indicted, convicted, and sentenced is contained in section 3082 of the Revised Statutes of the United States, which is as follows:

> If any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or be imprisoned for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury.

The section of the Revised Statutes above quoted was extended and applied to the island of Porto Rico

by section 14 of the Foraker act of April 12, 1900 (31 Stats., 80):

> SEC. 14. That the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal-revenue laws, which, in view of the provisions of section three, shall not have force and effect in Porto Rico.

We maintain that, inasmuch as the assignments of error in this case raise no question as to the proper construction or interpretation of this act of Congress and do not assert that any right claimed thereunder has been denied, the case is not one which is authorized by law to be brought before this court by writ of error. It is true that the indictment is attacked upon the ground that it fails to state a public offense, but it is difficult to see in what manner "an act of Congress is brought in question and the right claimed thereunder is denied" by asserting that the indictment fails to state a public offense.

Crowley v. United States, 194 U. S., 461–466.

This was a criminal case brought to this court by a writ of error from the district court of the United States for the district of Porto Rico. The Government contended, upon the argument of that case, that this court was without jurisdiction and that the appeal should be dismissed. The court, however, sustained its jurisdiction, and in the opinion delivered by Mr.

Justice Harlan clearly pointed out that an act of Congress was brought in question and that a right claimed thereunder had been denied. The court said:

> The first question is one of the jurisdiction of this court; the Government insisting that, under existing statutes, we are without authority to review the judgment in this case.
>
> By the thirty-fifth section of the Foraker act of April 12, 1900 (31 Stat., 85, c. 191), it is provided, among other things, that writs of error and appeals to this court from the final decisions of the district courts of the United States shall be allowed in all cases where "an act of Congress is brought in question and the right claimed thereunder is denied." In this case that act was brought in question by the contention of the parties, the contention of the accused being, in substance, that pursuant to that act of Congress the court below, in the matter of the qualifications of grand jurors, should have been controlled by the provisions of the local law relating to jurors, in connection with the statutes of the United States relating to the organization of grand juries and the trial and disposition of criminal causes; and the court below deciding that, notwithstanding the Foraker act, the local act of January 31, 1901, referred to in the plea, was not applicable to this prosecution, and that the grand jury finding the indictment, if a grand jury was necessary, was organized consistently with the laws of the United States under which the court proceeded. It thus appears that the ac-

> cused claimed a right under the act of Congress and under the Revised Statutes of the United States, which, it is alleged, was denied to him in the court below. This court has, therefore, jurisdiction to inquire whether there is anything of substance in that claim.

In the case at bar, however, there arose no controversy in the court below with respect to the act of Congress upon which the indictment was predicated, or any other act of Congress, it being assumed and conceded, so far as the record shows, that such act of Congress was not only constitutional and applicable, but that its meaning was clear and unambiguous. Neither did the plaintiff in error claim that any right under such law had been denied him by the trial court. His contention was simply that the United States had failed to properly frame an indictment under the law, so as to charge him with having committed a public offense; in other words, that the indictment was fatally defective.

Such question manifestly is not reviewable by this court under the provisions of the Foraker act above quoted, and we respectfully submit that this writ of error must be dismissed for want of jurisdiction in this court to review the case.

Possibly it may be contended by counsel for the plaintiff in error that the jurisdiction of this court to entertain this appeal is authorized by the first part of section 35 of the Foraker Act, above referred to. A

brief examination of the law will disclose that such a position is untenable:

> That writs of error and appeals from the final decisions of the supreme court of Porto Rico and the district court of the United States shall be allowed, and may be taken to the Supreme Court of the United States in the same manner and under the same regulations and in the same cases as from the supreme courts of the Territories of the United States. (Sec. 35, Foraker Act.)

It is apparent that Congress intended to confer the right to an appeal or writ of error from the final decision of the district court of the United States for the district of Porto Rico to the Supreme Court of the United States *in the same cases* in which an appeal or writ of error was allowed from the supreme courts of the Territories to the Supreme Court of the United States. In other words, if, under the law as it existed at the time of the passage of the Foraker Act, an appeal or writ of error would lie *in certain cases* from the supreme courts of the Territories to the Supreme Court of the United States, *then, and in such cases*, an appeal was given by the first part of section 35 of the Foraker Act, from the supreme court of Porto Rico and the district court of Porto Rico direct to the Supreme Court of the United States.

It is necessary, therefore, for us to ascertain and determine whether the case at bar is *such a case* as, had the judgment been rendered in a supreme court of one of the Territories, an appeal would now lie to

the Supreme Court of the United States; for if it be *such a case*, then it must necessarily follow that this writ of error was properly allowed and that this court has jurisdiction to determine this appeal.

This is a criminal case, not capital, and does not raise any of the questions referred to in section 5 of the judiciary act of March 3, 1891 (26 Stats., 826). Under section 6 of that act a case of this character was made final by the decision of the circuit court of appeals of the circuit in which it arose. Under section 15 of that act a case of this character arising in one of the Territories and carried by appeal to the supreme court of the Territory was made final in the circuit court of appeals. Section 15 of the judiciary act of March 3, 1891, is as follows:

> That the circuit court of appeal in cases in which the judgments of the circuit courts of appeal are made final by this act shall have the same appellate jurisdiction, by writ of error or appeal, to review the judgments, orders, and decrees of the supreme courts of the several Territories as by this act they may have to review the judgments, orders, and decrees of the district court and circuit courts; and for that purpose the several Territories shall, by orders of the Supreme Court, to be made from time to time, be assigned to particular circuits.

It is obvious, therefore, that if the judgment in this case had been rendered in the supreme court of one of the Territories there would have been no appeal from such judgment to the Supreme Court of the United States, appellate jurisdiction *in such cases* being vested

exclusively in the circuit court of appeals. It clearly follows, therefore, that so far as this particular case is concerned this court has no jurisdiction to review by writ of error the final judgment of the United States district court for the island of Porto Rico, even under the first part of section 35 of the Foraker Act.

Shute v. Keyser (149 U. S., 649, 651).

> The result is that, as the acts regulating appeals or writs of error from or to the supreme courts of the Territories to or from this court were not repealed, except to the extent specified, an appeal or writ of error lies to this court from the judgments or decrees of those courts, except in cases where the judgments of the circuit courts of appeals are made final.

Had the precise case which we have here under discussion arisen in the Territory of Arizona the circuit court of appeals for the ninth circuit could have reviewed the decision of the supreme court of that Territory by writ of error under section 15 of the judiciary act of March 3, 1891. It may be that the decision of the United States district court of Porto Rico in this case can not, under the law, be reviewed in the circuit court of appeals, and that the plaintiff in error is not in as favorable a position, so far as having his case reviewed is concerned, as he would have been had the crime been committed in the Territory of Arizona. This, however, is clearly immaterial, the question for determination being *whether this is a case which, had it been decided by the supreme court of a Territory, could be reviewed by the Supreme Court of the United States.* We find

that it is not such a case, and it follows, therefore, that it is not one of *those cases* referred to in the first part of section 35 of the Foraker Act.

II.

The allegations contained in the indictment follow the language of the statute, and are sufficient to charge a public offense under section 3082 of the Revised Statutes.

Section 3082 provides:

> If any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or be imprisoned for any time not exceeding two years, or both. Whenever, on trial for a violation of this section, the defendant is shown to have or to have had possession of such goods, such possession shall be deemed evidence sufficient to authorize conviction, unless the defendant shall explain the possession to the satisfaction of the jury.

Under this law, and section 14 of the Foraker act, hereinbefore quoted, extending and applying the same to the island of Porto Rico, it is made a public offense to receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of mer-

chandise imported contrary to law, knowing the same to have been so imported. The indictment (Rec., p. 1) charges Ricardo Amado in almost the precise language of the statute with having knowingly and unlawfully received, concealed, and facilitated the transportation, concealment, and sale of certain merchandise, describing it, subject to the payment of duties to the United States, and upon which no duties had been paid, and contains every material averment necessary to apprise the defendant of the crime with which he was charged. This court has repeatedly held that an indictment which follows the language of the statute is sufficient in those cases wherein the language of the statute describes all the necessary elements of the offense, and is sufficient to advise the defendant of the crime with which he is charged.

Ledbetter v. United States (170 U. S., 606, 611).

> The cases wherein it is held that an indictment in the exact language of the statute is not sufficient are those wherein the statute does not contain all the elements of the offense, as in *United States* v. *Carll* (105 U. S., 611), where a statute against passing counterfeit money failed to aver the scienter; but where the statute sets forth every ingredient of the offense an indictment in its very words is sufficient, though that offense be more fully defined in some other section. (*United States* v. *Gooding*, 12 Wheat., 460, 473.)

III.

The third assignment of error to the effect "that said verdict was not sustained by the evidence but was contrary thereto," will not be considered by this court for the following reason:

(a)

An assignment of error based upon the insufficiency of evidence must point out the parts in which the evidence is insufficient or it will not be considered. A mere general assignment of error that the verdict is contrary to the evidence, or contrary to the law and the evidence, is too general and will not be considered.

Grand Trunk Railway Company v. Ives (144 U. S., 408, 415, 416).

Furthermore, this assignment of error is too broad and general, under the twenty-first rule of this court, to bring up such a specific objection as it seeks to do. This court should not be put to the labor and trouble of examining the whole of the evidence to see whether there was enough for the verdict below to have rested upon. But any objection made to the nonexistence of evidence to support the verdict and judgment below should, in the language of the rule, "set out separately and particularly each error asserted and intended to be urged." (*Van Stone* v. *Stillwell & Bierce Manufacturing Co.*, 142 U. S., 128.) In our opinion, therefore, this point raised by the plaintiff in error is without merit. As to whether, as a matter of fact, there was evidence respecting the existence of any beneficiaries to this action, we do not, of course, express any opinion. In the view above taken

of the matter, it is not necessary to decide that point. The legal presumption is that there was; and we shall proceed to consider the other assignments of error upon that presumption.

(b)

The claim is made by the plaintiff in error that the verdict of the jury was contrary to the evidence, for the reason that it was not proven upon the trial that the goods alleged to have been concealed were actually smuggled into the island of Porto Rico.

It is sufficient to point out that during the progress of the trial, and at the termination thereof, the attention of the trial court was not directed to the absence of such evidence, nor was any request submitted to the court to charge the jury relative thereto. The first time that this question was called to the attention of the court was in the motion for a new trial (Rec., p. 4) after the motion in arrest of judgment had been made and overruled (Rec., p. 3). It is manifest that such defects in the proof could not properly be raised in such manner, for the reason that this court will not review on writ of error a refusal to grant a new trial. (*Alexander et al.* v. *United States*, 57 Fed. Rep., 828; *Harliss* v. *United States*, 92 Fed. Rep., 353; *Young* v. *United States*, 95 U. S., 641; *Van Stone* v. *Stillwell & Bierce Manufacturing Company*, 142 U. S., 128.)

(c)

Section 1011 of the Revised Statutes provides as follows:

> There shall be no reversal in the Supreme Court or in a circuit court upon a writ of error,

for error in ruling any plea in abatement other than a plea to the jurisdiction of the court, or for any error in fact.

Martinton v. Fairbanks (112 U. S., 670, 672).

The provision of section 1011, Revised Statutes, continues in force and forbids a reversal of the judgment of the circuit court for any error of fact. Upon the issues of fact raised by the pleadings in this case there was a general finding for the plaintiff. The defendant contends that the evidence submitted to the court did not justify this general finding. But, if the finding depends upon the weighing of conflicting evidence, it was a decision on the facts, the revision of which is forbidden to this court by section 1011 If the question was whether all the evidence was sufficient in law to warrant a finding for the plaintiff, he should have presented that question by a request for a definite ruling upon that point.

See also *Van Stone* v. *Stillwell & Bierce Manufacturing Co.*, 142 U. S., 128.

(d)

And, finally, we may point out for the information of the court and the satisfaction of the plaintiff in error that the evidence was sufficient to establish the fact that the liquors mentioned in the indictment had been imported into the island of Port Rico without the payment of the duties required by law.

Enrique Molina y Enriquez, a captain of the insular police, testified (Rec., p. 13) that you could see upon all the boxes in which this liquor was found the mark

"A. Lugo y Cie., St. Thomas," and inferentially that the boxes were new and that the corks and wires of the bottles were free from rust, which indicated that they had been packed recently.

The witness Thomas M. Cook, special deputy collector of customs (Rec., p. 22), testified that these goods had not been imported into the island of Porto Rico from the port of St. Thomas, and on page 24 of the record the district attorney offered to prove that the firm of A. Lugo & Co. did business in St. Thomas, and thereupon Judge Hord, counsel for the plaintiff in error, admitted such fact.

From this testimony, and in the absence of any testimony to the contrary, the jury were certainly justified in finding as a fact that these wines and liquors had been imported into the island of Porto Rico contrary to law.

We respectfully submit, therefore, that this writ of error either must be dismissed for want of jurisdiction or the decision of the trial court in all things affirmed.

MILTON D. PURDY,
Assistant Attorney-General.

O

Supreme Court of the United States.

No. 33.—October Term, 1904.

Ricardo Amado, Plaintiff in Error, vs. The United States. } In error to the District Court of the United States for the District of Porto Rico.

[November 7th 1904.]

Mr. Justice Harlan delivered the opinion of the Court.

The Revised Statutes of the United States provide that "if any person shall fraudulently or knowingly import or bring into the United States, or assist in so doing, any merchandise, contrary to law, or shall receive, conceal, buy, sell, or in any manner facilitate the transportation, concealment, or sale of such merchandise after importation, knowing the same to have been imported contrary to law, such merchandise shall be forfeited and the offender shall be fined in any sum not exceeding five thousand dollars nor less than fifty dollars, or be imprisoned for any time not exceeding two years, or both." § 3082.

The act of April 12th 1900, temporarily providing revenues and a civil government for Porto Rico, declares, among other things, that on and after its passage "the same tariffs, customs, and duties shall be levied, collected, and paid upon all articles imported into Porto Rico from ports other than those of the United States which are required by law to be collected upon articles imported into the United States from foreign countries;" also, that "the statutory laws of the United States not locally inapplicable, except as hereinbefore or hereinafter otherwise provided, shall have the same force and effect in Porto Rico as in the United States, except the internal revenue laws, which, in view of the provisions of section three, shall not have force and effect in Porto Rico." 31 *Stat.* 77, 80, *c.* 191, §§ 2, 14.

These statutes being in force, the plaintiff in error, Amado, was indicted in the District Court of the United States for Porto Rico, upon the charge of having, on May 28th 1901, unlawfully received, concealed and facilitated the transportation, concealment and sale of certain specified quantities of Holland gin, vermouth, brandy and Danish beer, theretofore, as the accused well knew, fraudulently imported into Porto Rico, contrary to law, without the payment to the United States of the duties imposed upon such articles.

The accused was duly arraigned, and found guilty by a jury. A motion in arrest of judgment having been overruled, he was sentenced to confine-

ment in the penitentiary of Porto Rico for one year and one day, and to pay a fine of five hundred dollars. A new trial was denied, and the accused sued out the present writ of error.

In allowing the writ the Judge of the District Court expressed some doubt whether error would lie, but he resolved the doubt in favor of the defendant.

The Government insists that the writ of error should be dismissed for want of jurisdiction in this court to review the judgment below; otherwise, that the judgment should be affirmed.

It is provided by the above act of April 12th 1900 that the District Court of the United States for Porto Rico "shall have, in addition to the ordinary jurisdiction of District Courts of the United States, jurisdiction of all cases cognizant in the Circuit Courts of the United States, and shall proceed therein in the same manner as a Circuit Court." 31 *Stat.* 77, 84, *c.* 191, § 34.

The act also provides that writs of error and appeals from the final decisions of the Supreme Court of Porto Rico and the District Court of the United States shall be allowed and may be taken to this court "in the same manner and under the same regulations and in the same cases as from the Supreme Courts of the Territories of the United States; and such writs of error and appeal shall be allowed in all cases where the Constitution of the United States, or treaty thereof, or an act of Congress is brought in question and the right claimed thereunder is denied; ." *Ibid.* § 35.

The ~~Government insists that this act authorizes a~~ review of the final judgment of the District Court of the United States for Porto Rico ~~only in~~ those cases in which the Constitution or a treaty of the United States or an act of Congress is brought in question and the right claimed under it denied. This construction is too narrow and technical. There may be cases—certainly civil cases—in the United States District Court for Porto Rico that do not involve any question arising under the Constitution, or a treaty, or an act of Congress; and yet if the case be one which, if determined in a Supreme Court of one of the Territories of the United States, could be brought here for re-examination, the final judgment could be reviewed by this court, although no right of a distinctly Federal nature was involved. *Royal Ins. Co.* v. *Martin*, 192 *U. S.* 149–60, *Hijo* v. *United States*, 194 *U. S.* 315, 320. See *Crowley* v. *United States*, 194 *U. S.* 461. But even this test, if applied here, will not avail the accused; for the statutes regulating the appellate jurisdiction of this court do not authorize a review of the final judgment in a Supreme Court of one of the Territories of the United States in a criminal case like this one.

Can our jurisdiction be sustained by reference to the words, in the Porto Rico act, "in all cases where the Constitution of the United States, or a treaty thereof, or an act of Congress is brought in question and the right

claimed thereunder is denied?" We must answer this question in the negative. The nearest approach to a claim of specific right under the Constitution or a treaty of the United States or under an act of Congress, was when the accused, in his written motion to arrest the judgment or sentence, insisted that the indictment did not set forth "an offense under the statutes of the United States." But that language amounted to nothing more, in legal effect, than a plea of not guilty, or a demurrer upon the general ground that the indictment did not state enough to show an offense. It was not the assertion of any particular right under the Constitution, or under any treaty, or under an act of Congress, which would be denied to him, if the prosecution was sustained. His contention was only that he was not subject to criminal prosecution by reason of anything set forth in the indictment. The indictment was plainly sufficient under the statute prescribing the offense charged, and the objections to it were too indefinite to meet the requirements of the act of 1900, and make the case one which, by that act, could be brought to this court for review. Unless the case was one in which the judgment could be reviewed here, then such judgment would be final and not subject to review; for no case determined in the United States court for Porto Rico can be carried to a Circuit Court of Appeals. We said, in *Royal Ins. Co.* v. *Martin*, 192 *U. S.* 149, 160, that "Congress did not intend that any connection should exist between the United States court for Porto Rico and any Circuit Court of Appeals established under the act of 1891."

The writ of error must be dismissed for want of jurisdiction in this court, and

It is so ordered.

True copy.

Test:

Clerk Supreme Court, U. S.